

Wm. B. Horkins, J:

Introduction

[1] Mr. Peter Wilson has applied for and been refused a Firearms Possession Licence. He now seeks to have this Court review that refusal and set it aside. The issue on a review of a firearms officer's refusal to issue a licence is whether that decision was "justified". This review is somewhat hampered by both the passage of time since the refusal was made and the relative lack of evidence with respect to the reasons for the refusal, either now or at the time the decision was made.

[2] Some background context is necessary to appreciate the live issues before the Court.

History of the Application

[3] In late December 2000 Mr. Peter Wilson applied for a Firearms Possession Licence. By way of a Notice dated January 17, 2002, the Application was refused. Attached to the Notice of Refusal was a letter, on the letterhead of the Toronto Police Service and over the signature of a detective identified as the "Area Firearms Officer". No reasons for the refusal were given to Mr. Wilson apart from the simple statement that issuing the licence would not be "...in the interests of the safety of that or any other person". Mr. Wilson immediately filed an appeal by way of a Reference to this Court. The Reference Hearing itself was adjourned from time to time for a variety of reasons until October 29, 2004.

The Law

[4] A comprehensive and detailed regulatory scheme governs the ownership and possession of firearms in Canada¹. In Canada there is no constitutional "right to bear arms" such as we often hear said to exist in the United States of America. Parliament has recognized that all firearms are inherently dangerous and that there is great social value in state control of the use and availability of guns in a civilized society.

¹I am grateful to Counsel for the Applicant, Mr. Martin Q.C., for providing the Court with a very useful resource; a briefing book on the legislation together with a general collection of Reference Hearing decisions.

[5] Although Parliament has recognised that there are many legitimate reasons for private individuals to have guns, I think it is an accurate observation to say, "...the logic of the regulatory regime proceeds from the premise that some people should never be permitted to possess firearms. Even those who are permitted to have guns ought to be restricted in the type of firearms they possess and the conditions under which they are permitted to possess them."²

[6] The *Firearms Act* requires everyone who possesses a firearm to hold at least a "Possession Licence" for that particular class of firearm. Every individual seeking a firearms licence must fulfil certain basic eligibility requirements. Understandably, the chief concern of the legislation is public safety. If it is not safe for an individual to hold a licence then that individual will not be given a licence. Section 5(2) of the *Firearms Act* sets out a number of presumptive bars which the Chief Firearms Officer (CFO) must consider in deciding whether or not to issue a particular licence. The list is not exhaustive, and the CFO may consider other factors. An applicant's prior treatment for a violent mental illness or a violent background generally can be grounds for disqualification.

[7] The *Firearms Act*, s 5;

5. (1) A person is not eligible to hold a licence if it is desirable, in the interests of the safety of that or any other person, that the person not possess a firearm, a cross-bow, a prohibited weapon, a restricted weapon, a prohibited device, ammunition or prohibited ammunition.

(2) In determining whether a person is eligible to hold a licence under subsection (1), a chief firearms officer or, on a reference under section 74, a provincial court judge shall have regard to whether the person, within the previous five years,

- (a) has been convicted or discharged under section 730 of the *Criminal Code* of
 - (i) an offence in the commission of which violence against another person was used, threatened or attempted,
 - (ii) an offence under this Act or Part III of the *Criminal Code*,
 - (iii) an offence under section 264 of the *Criminal Code* (criminal harassment), or
 - (iv) an offence relating to the contravention of subsection 5(1) or (2), 6(1) or (2) or 7(1) of the *Controlled Drugs and Substances Act*;
- (b) has been treated for a mental illness, whether in a hospital, mental institute, psychiatric clinic or otherwise and whether or not the person was confined to such a hospital, institute or clinic, that was associated with violence or threatened or attempted violence on the part of the person against any person; or
- (c) has a history of behaviour that includes violence or threatened or attempted violence on the part of the person against any person.

² Brian McNeely, *The New Firearms Legislation* 17 CR (5) 285 at page 286. An excellent overview of the legislative scheme.

[8] Where the CFO refuses to issue a licence, the applicant may appeal that decision to the Ontario Court of Justice. It is clear that Parliament has mandated a *de novo* hearing before this Court. The hearing is therefore not restricted to a review of the information before the firearms officer nor to reviewing the reasons for the officer's conclusions. The Court is directed to hear "all relevant evidence" presented by the Chief Firearms Officer and the applicant. On the Reference Hearing, the burden of proof is on the applicant to satisfy the Court that the refusal to issue the licence "was not justified". A valid justification for refusal of a licence must relate to the public safety purpose of the legislation itself. The exercise of discretion by the firearms officer in refusing to issue a licence must relate to that purpose. There is no presumptive deference to the Firearms Officer's decision. This is especially so in the absence of a record of the considerations he may have applied in reaching his own conclusions. To confirm his decision, a rational basis for that decision must be demonstrated before me.

The evidence on the Reference Hearing

[9] In this case it is particularly noteworthy that I do not have any evidence as to what information the firearms officer had before him, nor do I have the benefit of the reasons he had for exercising his discretion to refuse the initial application. The absence of this evidence cannot be helped; the officer in question is unavailable to give evidence at this hearing due to serious long-standing health concerns and no written reasons were provided at the time of the refusal. I am therefore essentially left to determine whether the firearms officer's conclusions were "justified" on the basis of the evidence that I have now heard on the *de novo* hearing.

[10] On the hearing before me I have evidence from the applicant Mr. Wilson and his wife Nancy. In addition to the *viva voce* evidence, a psychiatric report authored by Dr. Julian Gojer was filed and, beyond that, some information was stipulated through counsel.

[11] Both Mr. Wilson and Dr. Gojer have addressed the issue of the refusal on the basis that the reason for the firearms officer's concern was that he saw Mr. Wilson as having mental health issues and in particular as being a suicide risk.

[12] Ten or 15 years ago, Mr. Wilson claims to have feigned suicide on two separate occasions. It seems that since about that time Mr. Wilson has suffered from “low-grade depression and anxiety”. The two incidents are certainly matters of legitimate concern. Mr. Wilson appreciated this area of concern and addressed it in his evidence. The details of his explanations are not so important; it suffices here to say that on the evidence, I have to conclude that both events were mere charades. Behaviour such as this is troubling in the context of a public safety inquiry, therefore I was most interested in the psychiatric report authored by Dr. Gojer that was put forward.

[13] The applicant retained Dr. Gojer, a well-regarded forensic psychiatrist, to prepare the assessment report that was filed on this Reference Hearing. Dr. Gojer is of the opinion that Mr. Wilson’s mood is “...settled with no evidence of any depression, anxiety, elation or irritability”. “Mr. Wilson did not have any delusions, bizarre ideas, suicidal or homicidal thoughts. There were no perceptual disturbances like illusions or hallucinations.” It was Dr. Gojer’s diagnosis that Mr. Peter Wilson does not suffer from any major mental illness. Dr. Gojer states that Mr. Wilson “...has used poor judgment in making half-hearted suicide attempts.” “There is nothing to suggest that he has an antisocial personality disorder or is a psychopath.”

[14] Under the title of “Risk Assessment”, Dr. Gojer states that “Mr. Wilson does not suffer from a major mental illness... ..does not exhibit obvious features of a personality disorder and it is highly unlikely that he has an antisocial personality disorder. He is not psychopathic. He is not addicted to any illegal drugs or alcohol... He does not have any suicidal thoughts but may have used suicidal gestures in the past in a manipulative manner.”

[15] Dr. Gojer concludes his report with the following: “Notwithstanding a long history of anxiety and some depressive symptoms dating back to 1989, Mr. Wilson has not posed any risk to any other person at any time. He has made some low-grade suicide attempts, which do not appear to be serious. He has never used a weapon to threaten anyone or harm himself. With the information available to me he presents as being virtually no risk to himself or others. I do not believe that there are any specific contraindications to him possessing any firearms.”

[16] I do caution myself that Dr. Gojer's opinion appears to be based entirely upon his interview with Mr. Wilson and that the factual basis for his opinions appears to be sourced entirely from Mr. Wilson.

[17] Mr. Wilson gave evidence on the hearing before me. There is absolutely nothing in Mr. Wilson's demeanour or presentment that would cause one to have any concern of him being a risk of causing harm to himself or others. Mr. Wilson's evidence is consistent with the information that he provided to Dr. Gojer and which appears in Dr. Gojer's report.

[18] Mr. Wilson catalogued the different guns that he has owned. They are primarily target guns as opposed to hunting guns or weapons. Both Mr. Wilson and his wife are target shooting enthusiasts and to some extent, collectors.

[19] Mrs. Nancy Wilson gave very brief evidence at the hearing. Her evidence essentially confirmed her husband's assertion that he is now emotionally stable, responsible and of no concern in terms of being a threat to himself or others. She indicated that over the past five years in particular they have faced some of life's more difficult challenges together and that Mr. Wilson has demonstrated a greatly improved ability to cope.

[20] I heard no evidence from any witness opposed to the issuance of the firearms licence. As I have already noted, Mr. Bellehumeur, on behalf of the Crown, explained that the firearms officer, who would normally give evidence on a hearing such as this, was simply unable to attend to give evidence. His absence, therefore, is completely understandable and appropriate. However, I must underscore that I am left to determine this issue without the benefit of whatever other information that officer may have had that moved him to refuse the licence in question.

[21] I have had the benefit of very helpful submissions from both Mr. Martin for the applicant and Mr. Bellehumeur for the Crown and I thank them for their efforts.

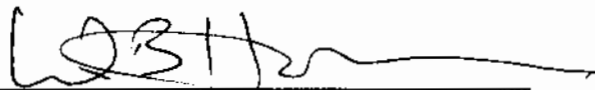
Final Analysis

[22] There is no suggestion that Mr. Wilson has ever used a gun for any criminal purpose or that he has ever had any intention of using a gun for any criminal purpose. Mr. Wilson has been trained in the safe handling of guns and has been a member of a

recognized shooting club. Mr. Wilson and his wife have both been the lawful owners of a variety of firearms in the past.

[23] It seems clear to me that it is Parliament's intention, expressed through the firearms legislation, that unless there is some justified reason for refusing to issue the appropriate licence someone such as Mr. Wilson must be permitted to possess firearms subject to compliance with the relevant statutory scheme. There is, in the evidence before me, no sufficient basis for refusing Mr. Wilson the licence that he seeks. Therefore, I order that the refusal to issue the Firearms Possession Licence herein be set aside and that the licence be issued.

Released: November 12, 2004

A handwritten signature in black ink, appearing to read 'W.B.H.', written over a horizontal line. The signature is stylized and extends to the right with a long, thin stroke.

Justice Wm. B. Horkins